

Date of Decision:20.11.1995

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr A S Vakil, Advocate for the petitioner
Mr J R Nanavaty, Advocate for the respondent

CORAM ; N N MATHUR,J.
(November 20, 1995)

ORAL JUDGMENT

The 8 petitioners in the present Special Civil Application are doing business in iron scrap. They have been purchasing old iron scrap and used pipes from Alang Ship Breaking Yard, at Manar, Taluka Talaja, District Bhavnagar. They are keeping the said iron scrap and used pipes in their Godowns and thereafter they are selling the same in the market.

2. The say of the petitioners is that the respondent-Municipal Corporation was levying octroi duty on the goods being purchased on weight basis as provided under Schedule 'B' of the Octroi Rules. Item 35 of the Schedule 'B' of the Rules provides about levy of octroi duty on iron scrap. The duty was Rs.7.50 per Metric Tonne. The

respondent Corporation has now started levying the duty on ad valorem basis at the rate of 1% on the total value of the goods since November, 1983. The petitioners have challenged the levying of octroi duty on various grounds. The controversy is as to whether the octroi can be levied on the subject material as per item No.62 (a) of the Schedule 'A' of the Rules or as per item No.32 of Schedule 'B' at the rate of 10% per Metric Tonne.

3. This petition essentially involves disputed question of facts. In view of the decision taken by this Court in identical matters being Special Civil Applications No.6161/84 and 4920/86 on 20.11.1995, I am not inclined to enter into the controversy. The petitioners may make representation to the respondent-Corporation. If such representation is made to the Commissioner, Municipal Corporation, Bhavnagar within one month, the same may be decided within a period of one month thereafter. In case the petitioners challenge the levy by way of suit, it will be open for the petitioners to raise all the contentions in the suit, which have been raised in this Special Civil Application.

This Special Civil Application is disposed of accordingly. Rule discharged. No order as to costs.

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